UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/2002/NGO/10
19 July 2002

ENGLISH, FRENCH AND
SPANISH ONLY

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-fourth session
Item 4 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Joint written statement* submitted by Europe-Third World Centre, World Confederation of Labour, non-governmer tal organisations in general consultative status, American Association of Jurists, Centro de Estudios Europeos, Commission for the Defense of Human Rights in Central America, France Libertés : Fondation Danielle Mitterrand, Indian Movement "Tupaj Amaru", International League for the Rights and Liberation of Peoples, Union of Arab Jurists, Women's International League for Peace and Freedom, non-governmental organisations in special consultative status, International Educational Development, Movement against Racism and for Friendship among Peoples and World Peace Council, non-governmental organisations on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[5 July 2002]

---

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. * 2 0 0 2 0 * 4 3 3 3 *
ENG

Transnational Corporations and Human Rights

I. Effects of transnational corporations' activities and working methods on human rights

A. What are transnational corporations?

1. Transnational corporations are private law legal entities with a presence in multiple territorial jurisdictions but with a single decision-making headquarters.

2. Transnational corporations are active in the production of goods and of services – in practically all areas of human activity – and also in financial speculation.

3. The huge amount of capital funds they possess gives them a power unprecedented in history. The trading volume of the largest transnational corporations is equal to or bigger than many countries' GDP, and the trading volume of some half dozen of them is greater that the combined GDP of the 100 poorest countries.

4. They can operate with a main corporation and subsidiaries, build up groups active in a single sector or conglomerates active in diverse fields, combine with other firms by take-overs or buy outs or by setting up financial holdings. The only operating capital such holdings posses is stock shares with which they control companies or groups of companies. However, one can always identify the nationality of a transnational corporation in that there is a government that supports and defends its interests (at the WTO, the IMF, the World Bank, or other international organisations, or by political, military or other means).

5. The true productive activities are sometimes subcontracted out while the transnational corporation controls the know-how, the trade mark and the marketing of the products. Activities can be carried on in different national territories and may quickly and frequently change location to ensure profit maximisation.

6. The transnational character of their activities allows these corporations to avoid the national and international laws and regulations that they consider counter to their interests. Transnational corporations also engage in illicit activities or in activities situated in a grey zone between legality and illegality.

7. All these activities of the transnational corporations are actively supported and aided by the wealthy countries' governments, which represent and share their interests.

B. Effects of the working methods and the activities of transnational corporations

8. These working methods and activities are governed by a basic goal : getting maximum profit in the shortest time possible, This basic objective does not admit of any obstacle whatsoever and, to get it, transnational corporations stop at nothing :

   a) the promoting of wars of aggression and interethnic conflicts in order to control the natural resources of the planet – in particular energy sources and strategic minerals – and to foster the growth and the profits of the war industry;

   b) the violation of workers' rights and human rights in general;

   c) the degradation of the environment (air water and soil included) and in particular the active and well financed opposition by the Global Climate Coalition, comprising, among others Ford, General Motors, Mobil, and Union Carbide, with the unflagging support of the government of the United States, to any limitation of emission of greenhouse gases (Kyoto Protocol);

d) the bribing of civil servants to take over essential public services (such as the supply of drinking water) through their fraudulent privatisation and thus the elimination of the rights of present and potential users;

e) the appropriation - formally legal or illegal - of ancestral, technical and scientific knowledge, which are by nature social entities;

f) the corruption of political and intellectual elites and of leaders of « civil society »;

g) the monopolisation of the principal means of communication, purveyors of the dominant ideology and mass cultural products, in order to manipulate and condition public opinion and thus change the habits and behaviour of people;

h) financing dictators, the overthrow of governments, and other criminal activities.

9. Such methods are incompatible with human rights in general, including the right to self-determination and the right to development.

C. Confusion of economic and political powers

10. If the influence of economic power over political power has been a constant in human society for as long as economic power has exited, one can notice in recent decades a growing interpenetration of economic and political power, which has led to the confusion, indeed, to the fusion, of these two powers. This process has produced an erosion both of representative democracy, right up to its formal aspects, and of the role played by its political institutions, national as well as international, as mediators – or supposed mediators – between different and contradictory interests.

11. The outstanding example of this relation between economic and political power is the United Sates, where a majority of the world's transnational corporations are based and where several are directly represented in the current government.

12. This confusion between political and economic powers is also present in the United Nations by the way of the « Global Compact » and in the European Union by the way the collaboration between the European Commission and the European Industries Round Table (ERT), composed of the transnationals Volvo, Olivetti, Siemens, Unilever and others.

II. Recommendations and proposals to hold transnational corporations responsible

13. In a state of law, transnational corporations, like individual persons and legal entities treated as individuals under the law, are liable under both civil and criminal law for violations of prevailing legal standards (both international standards, implemented through domestic legislation, and national standards).

14. Voluntary guidelines cannot substitute for standards established by national governmental organs and by international intergovernmental organs, for such guidelines are not binding legal standards whose violation leads to a punitive sanction.

15. Further, both experience and studies show that voluntary codes are inadequate, that their implementation has been found wanting because left to the discretion of the corporations, with no real independent outside monitoring. For example, a consulting firm, engaged by a transnational corporation – hence paid by the corporation – hardly constitutes an independent outside monitor.

16. It is thus necessary to set forth proposals to situate transnational corporations within a legal framework built upon certain basic principles, as follows :

a) National communities and the international community are communities of law, that is they are built on legal standards. It is « essential that human rights should be protected by the rule of law… » (Preamble of the Universal Declaration of Human Rights).

b) These standards apply necessarily both to individual persons and to legal entities

construed as persons, and their violation results in a punitive sanction.

c) Transnational corporations are legal entities construed as persons under the law and, as such, subjects and objects of law. Prevailing legal standards are thus binding upon transnational corporations, just as upon any individual person or any other legal entity construed as a person. The equality of every person before the law is clearly established in the International Charter of Human Rights (the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights).

17. When applying those standards, one must start from the principle according to which human rights are at the top of the normative pyramid, to wit giving human rights priority over other rights such as intellectual property rights.

18. Existing standards should be made complete on both the national and international levels.

a) The principle of public service must be emphasized, especially in the areas of health, food (including clean water), education, housing, communication and information in all their forms, and one must prevent the setting up of oligopolies and private monopolies in these areas.

b) Implementation mechanisms of the specific instruments dealing with transnationals must be reinforced, particularly those such as the Declaration of Tripartite Principles on Transnational Corporations and Social Policy adopted by the Administrative Board of the International Labor Organization in 1977 (which, in its November 2000 amendment, refers to 30 conventions and 35 recommendations of the ILO) and the OCDE directives (revised text, June 2000), even though they merely address recommendations to the corporations.

c) Compulsory guidelines for transnational corporations must be established, guidelines such as were requested in the Declaration and the Program of Action of the Millennium Forum (United Nations, New York, 26 May 2000, Point 2 of Section A) by more than 1000 non-governmental organisations from 100 countries. These guidelines should also address the question of technology transfers.

d) Governments that have not yet done so should incorporate into legislation the criminal liability of legal entities.

e) There is no competent international criminal jurisdiction for judging private legal entities. The statutes of the International Criminal Court adopted in Rome and in force since 1 July 2002, do not provide for judging legal entities or infractions against social, economic and cultural rights. For the time being, the possibility of using this court to inform the prosecutor (individuals may not denounce much less file a complaint in this court) of violations of human rights committed by transnational corporations so that the prosecutor may decide to indict those responsible is, all the same, not to be ruled out. It would be advisable however to promote the reform of the statues of the International Criminal Court to include under its jurisdiction infractions against economic, social and cultural rights and the criminal liability of private individual persons.

f) For the time being, national courts are the only ones that may receive complaints and requests against transnational corporations and their managers and directors, to the extent allowed by an ever-growing application of the principle of universal jurisdiction.

g) At present, there is a number of trials under way against transnational corporations and their directors and managers in various national jurisdictions for violations of several categories of human rights : environment degradation, violation of labor rights, complicity in harassment and murder of unionists, crimes against humanity, etc. Among the accused corporations, there are several « Global Contact » partners.

h) Finally, the possibility of creating an international tribunal for transnational corporations

should be studied, based on the model of the International Court of the Law of the Sea, established by the Convention on the Law of the Sea (Montego Bay, December 1982).

III. Government responsibility

19. The right to development and the progressive enjoyment of economic, social and cultural rights comports the obligation, for governments, to do their utmost to promote the economic, social and cultural progress of their peoples.

20. Governments have, in the area of economic, social and cultural rights as well as in the area of the right to development, not only obligations towards their own peoples but also, as members of the international community, towards other countries and towards humanity in general. It is a question of rights called « rights of solidarity » (Art. 1, par. 1, of the United Nations Charter; Art. 22 of the Universal Declaration of Human Rights; Art. 2 of the International Covenant on Economic, Social and Cultural Rights; the Declaration on the Right to Development - especially Art. 2 and Art. 6 -, etc.).

21. Governments are also responsible, when they have failed in their oversight duty, for violations (on their own territory or across-borders) committed by individuals (including transnational corporations) which come under their jurisdiction, as has been established by arbitration decisions and by numerous international conventions, in particular those relative to the preservation of the environment.

22. Governments are internationally responsible for the incorporation of basic international standards into their domestic law.

23. To fulfill their obligations, governments have the right and the duty to protect and to guarantee the right of their peoples to freely dispose of their wealth and natural resources, and they must act in such as way that those peoples are not deprived of their means of subsistence (Art. 1, par. 2 of the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Declaration on the Right to Development).